

**MINUTES**  
**Crested Butte Town Council**  
**Regular Council Meeting**  
**April 16, 2012**  
**Council Chambers, Crested Butte Town Hall**

Mayor Aaron Huckstep called the meeting to order at 7:04 p.m. Councilmembers present: Glenn Michel, Roland Mason, David Owen, Jim Schmidt and Shaun Matusiewicz. Councilmember absent: John Wirsing. Staff Present: Town Manager Susan Parker, Town Clerk Eileen Hughes, Substitute Town Attorney Norman Wright, Building and Zoning Director Bob Gillie (for part of the meeting), Finance Director Lois Rozman (for part of the meeting), Public Works Director Rodney Due (for part of the meeting) and Town Planner John Hess (for part of the meeting).

**APPROVAL OF AGENDA**

Matusiewicz moved and Michel seconded to approve the agenda. A roll call vote was taken with all present voting "Yes." **Motion passed unanimously.** (Owen temporarily absent from Council Chamber).

**PROCLAMATIONS**

A) A Proclamation of the Town of Crested Butte Commemorating Jeremy Worrell.

Matusiewicz moved and Owen seconded to approve a proclamation commemorating Jeremy Worrell. A roll call vote was taken with all voting "Yes." **Motion passed unanimously.**

**CONSENT AGENDA**

A) Approval of Minutes of April 2, 2012 Council Meeting.

B) Approval of Renewals of Sidewalk Seating Revocable Licenses and Modified Liquor License Premises (as applicable) for: The Sunflower 214 Elk Avenue, Maxwell's 226 Elk Avenue and Teocalli Tamale 311 ½ Elk Avenue.

Owen moved and Mason seconded to approve the Consent Agenda. A roll call vote was taken with all voting "Yes." **Motion passed unanimously.**

**PUBLIC COMMENTS**

Doug Hudson, who will be renting the Nordic Center building from the Town for his summer kids day camp program called "Gravity Groms," introduced himself and his family to the Council. Hudson also mentioned that he is president of the Gunnison Trail Riders Association, an organization that promotes motorized trail uses. Hudson said his organization is in contact if the Town needs any help with requests to the U.S. Forest Service for projects such as construction of a bridge over the creek at the Deadman's Trailhead.

**STAFF UPDATES**

Eileen Hughes:

- Staff administratively approved the following special event permits: CB Kickers Adult Co-ed Soccer Tournament June 30 and July 1, 2012 at Rainbow Park and the Community School

field, Crested Butte Mountain Theatre 40th Anniversary BBQ at the Town Park Pavilion  
August 11, 2012.

### **PUBLIC HEARINGS**

A) Special Event Permit- Celebration Gala – Crested Butte Music Festival – Big Mine Ice Arena  
– July 20, 2012 from 5 p.m. to 10:30 p.m.

Mayor Huckstep confirmed with the Town Clerk that proper public notice of the public hearing was given. Mayor Huckstep noted the staff report on the topic from Deputy Town Clerk Carmen Bell. Mayor Huckstep opened the public hearing. There were no public comments. Mayor Huckstep closed the public hearing.

Matuszewicz moved and Owen seconded to approve the special event application for the Crested Butte Music Festival's Celebration Gala on July 20, 2012. A roll call vote was taken with all voting "Yes." **Motion passed unanimously.**

B) Special Event Liquor License - Celebration Gala – Crested Butte Music Festival – Big Mine Ice Arena – July 20, 2012 from 8 a.m. to 11 p.m.

Mayor Huckstep confirmed with the Town Clerk that proper public notice of the public hearing was given. Mayor Huckstep opened the public hearing. There were no public comments. Mayor Huckstep closed the public hearing. Council asked why the liquor license hours extended from the morning until 11 p.m. at night. Town Clerk Eileen Hughes explained that the license covers set up time when liquor may be on site but is not being served yet.

Schmidt moved and Owen seconded to approve a special event liquor license for the Crested Butte Music Festival's Celebration Gala on July 20, 2012 from 8 a.m. to 11 p.m. A roll call vote was taken with all voting "Yes." **Motion passed unanimously.**

C) Hearing of Appeal Filed by Mark Flolid and Leslie Annand of Board of Zoning and Architectural Review Decision Regarding the Reconstruction of a West Side and Rear Deck at 120 Sopris Avenue.

Councilmember David Owen said one of the parties in the appeal is a client of his. Owen declared a conflict of interest, recused himself and left the Council Chambers.

Mayor Huckstep noted a staff report from Design Review Coordinator Molly Minneman, as well as backup material on the appeal.

Substitute Town Attorney Norman Wright gave a brief overview of the public hearing process for the appeal. Wright said Council can hear arguments from the proponent and appellant and Council can choose to reject the Board of Zoning and Architectural Review's (BOZAR) decision, confirm the decision or remand the decision back to the BOZAR. Wright noted that the appeal was timely filed.

Mayor Huckstep confirmed with the Town Clerk that proper public notice of the public hearing was given.

Design Review Coordinator Molly Minneman showed Council plans for the reconstruction of a west side and rear deck at 120 Sopris Avenue, which was approved by the BOZAR. Minneman explained that the BOZAR reviewed the plan for a conditional waiver of a non-conforming aspect because the proposed new deck encroaches into the setback. Minneman explained that the proponents made the case that the existing deck could be taken apart and reconstructed; however, the proposed new deck will improve the existing situation because the new deck will be two feet off the property line and encroach less than the existing deck. Minneman noted that the current deck has been in existence for a long time and was in existence when the appellants purchased their home next door.

Council asked if there have been any similar cases that went through the BOZAR process. Minneman responded that this situation is unique in that it involves a deck. Minneman added that there have been requests in the past to demolish and rebuild a structure and in those cases property owners were asked not to encroach into the setback.

Attorney Jim Starr, representing the proponents of the project, introduced himself and project architectural consultant Andrew Hadley. Starr said the proponents contacted Hadley because of his familiarity with the Design Review Guidelines and working with the BOZAR. Starr noted that besides the deck reconstruction, other elements of the project include replacing the roof and revising the window fenestration pattern to bring the house closer to historic aspects. Starr said BOZAR was pleased that the proposed deck reconstruction was being moved farther away from the property line and that the new deck railing will be more opaque and provide more privacy. Starr added that the massive look of the existing deck is also being improved because the screening below the deck is being removed. Overall, he said the project improves the architectural aesthetic of the house.

Council noted the minutes from the BOZAR meeting say the BOZAR suggested that access to the deck be from the house. Also, Council pointed out that BOZAR discussed centering the deck in the back of the house. Hadley said centering the deck would block sunlight to the house. Council noted that the deck is not an historic contributing feature.

Starr asked Council to uphold BOZAR's decision and noted that Council should take into consideration Section 16-19-60 of the Code. Starr said the plan is not a proposal to enlarge a non-conforming encroachment, but it reduces the non-conforming use. Starr argued that because the proposal is not an enlargement of an encroachment that the proponents have a right to their deck project. Starr added that Town Staff looked at the project as needing a conditional waiver, but he is not sure a conditional waiver is required. Starr said it's a matter of right. Starr noted that Section 16-90-80 subsection c. says that any proposal to enlarge a non-conforming aspect must be reviewed to ensure that it does not exacerbate a potential problem. Starr said this project does not exacerbate problems, but rather mitigate because the encroachment is further from the lot line. Starr added that BOZAR made the right decision and he said it would be better if the applicants do not have to detach the deck, raise the house up and then reattach the existing deck.

Starr also said for the purpose of the appeal hearing he would like the record to reflect all the BOZAR documents relating to the project.

Appellant Leslie Annand, owner of the neighboring house located at 118 Sopris Avenue, said Starr's assessment that Section 16-90-80 c. should control this is incorrect because it relates to enlarging a non-conforming aspect. Annand said the fact that the deck exists now should not matter because none of the factors listed under 16-90-80 apply. Annand gave Council copies of the Improvement Location Certificate for the deck project showing that the deck will encroach 2 feet into the setback. Annand said she would not have a problem with the deck if it was on the ground floor, but sees no reason why it should be allowed to be built into the setback. Annand acknowledged that if the proponents left the deck in place (by reconstructing it with existing materials) it could be kept, but she does not think that is a reason to allow the encroachment of a new deck.

Annand read a letter she presented to Council and emphasized that that Section 16-19-90 b.3 lists a number of items that could create significant adverse impacts of an enlargement including, "but not limited to," snow shedding, fire access, etc. Annand said she believes privacy can be considered. Annand also said that during the BOZAR discussion it seemed like two members of BOZAR were against allowing the deck encroachment.

Council asked how setbacks relate to allowance for fire clearance. Minneman replied that the topic was discussed by BOZAR in the past, but due to fire resistant materials available in recent years fire clearance is not as important. Minneman noted that the deck project will have to be brought up to Code as close as possible. Hadley said the structural components of the deck will be fire resistant. Hadley also pointed out that Section 16-19-80 b. is the section of the Code that BOZAR used as the basis for its decision. Starr said both sections 16-19-80 b and Section 16-19-90 should be taken into consideration.

Hadley said the majority of the homes that sit on 25 foot wide lots have non-conforming aspects regarding setbacks and this is a strong component of the historic nature of the Town and what makes the historic district so unique. Hadley said he doesn't understand how the deck project is creating any adverse impact because Annand has stated that the adverse impact already exists. Annand countered that the Council needs to review the matter from a clean slate and this is an opportunity to clean up a non-conforming aspect. Annand noted that the proponents are raising the house and putting in a new foundation and she doubts they would reconstruct the deck as it is today.

BOZAR Chair Liz Sawyer said BOZAR members made a site visit to the project. She said the deck looks awful but is structurally sound. Sawyer said the deck came with the house and the owners really liked the deck. Sawyer said the proponents said they were going to make the deck two feet smaller and when BOZAR discussed the project two members asked about moving the deck to the center, but the BOZAR vote was unanimous to allow the deck to encroach two feet into the setback. Sawyer said the deck has been in existence a long time and BOZAR felt the Code has been met with the plans for the new deck.

Council member Glenn Michel said his understanding is a structure that encroaches into the setback can remain in the same footprint if the structure is kept intact and rebuilt, but if the structure is demolished and rebuilt it needs to meet setback requirements. Minneman explained that when the builder spoke with the Town Building inspector it was understood that the existing deck could be taken apart, stabilized and reconstructed in the same the location and this information was passed along to the BOZAR. Minneman acknowledged that there are gray areas in the Code and the matter being considered is not cut and dry.

Mayor Huckstep closed the public hearing.

Council members Matusiewicz and Mason said they supported BOZAR's decision on the matter and would vote to uphold the BOZAR decision. Council member Schmidt said it's a tough issue and noted that encroachments are very common in that area of town, but he said the deck is not historic. Mayor Huckstep said it would be nice if the Code was clearer, but he is not sure the new deck is creating an adverse impact especially in the context of the neighborhood. Councilmember Glenn Michel said he does not support the BOZAR's decision to allow the deck a completely new deck to be built in part of the setback. Mayor Huckstep pointed out that the applicant could follow through on the threat to rebuild the existing deck in the same location stick by stick.

Council asked substitute Town Attorney Norm Wright a few procedural questions about voting. Wright said the BOZAR decision will stand unless a majority of the Council votes to overturn it.

Matusiewicz moved and Michel seconded to overrule the February 28, 2012 BOZAR decision to allow the reconstruction of the rear deck as designed, based upon testimony presented at the meeting and non-compliance of the Conditional Waiver Criteria in Section 16-19-90.b.3. A roll call vote was taken with Mason, Matusiewicz and Huckstep voting "No." and Schmidt and Michel voting "Yes." **Motion fails 3-2.**

Council took a five minute break and Councilmember Owen returned to the Council Chambers following the break.

### **OLD BUSINESS**

A) Ordinance 19, Series 2011- An Ordinance Amending And Replacing The Town's Resident-Occupied Affordable Housing Requirements Contained In Chapter 16, Article 21 Of The Crested Butte Municipal Code And Amending The Resident-Occupied Affordable Housing **Payments-In-Lieu** Contained In Appendix A To The Code.

Mayor Huckstep read the title of the ordinance.

Matusiewicz moved and Schmidt seconded to continue Ordinance 19, Series 2011 to May 7, 2012. A roll call vote was taken with all voting "Yes." **Motion passed unanimously.**

B) Ordinance No. 6, Series 2012- An Ordinance Adopting The Guidelines, Rules And Requirements Governing Resident-Occupied Affordable Housing In The Town Of Crested Butte.

Mayor Huckstep read the title of the ordinance.

Matuszewicz moved and Owen seconded to continue Ordinance 6, Series 2012 to May 7, 2012. A roll call vote was taken with all voting "Yes." **Motion passed unanimously.**

C) Resolution No. 5, Series 2012- A Resolution Adopting The Crested Butte Resident-Occupied Affordable Housing Administrative Procedures Addressing The Implementing Of Chapter 16, Article 21 Of The Crested Butte Municipal Code.

Mayor Huckstep read the title of the Resolution.

Schmidt moved and Matuszewicz moved to continue Resolution No. 5, Series 2012 to May 7, 2012. A roll call vote was taken with all voting "Yes." **Motion passed unanimously.**

D) Crested Butte/Mt. Crested Butte Chamber of Commerce Service Agreement.

Finance Director Lois Rozman noted several revisions to the proposed Service Agreement, including a few typos and wording regarding timelines for the Chamber to provide financial information to the Town.

A councilmember said it's important that businesses that pay the Business Occupation and Licensing Tax (BOLT) but are not members of the Chamber of Commerce are treated fairly at the Visitor Center. Chamber Board President Andy Eflin replied that staff will be trained to treat all businesses equally. A councilmember said BOLT payers should be able to place the same size documents in the Visitor Center as Chamber members.

Council asked if the Chamber had reached an agreement with the Town of Mt. Crested Butte regarding BOLT payments and the Chamber's \$43,000 promissory note with the bank. Eflin said the Chamber is receiving BOLT payments from the Town of Mt. Crested Butte and the Chamber has a new promissory note with the bank. A councilmember suggested that the Town approve the Service Agreement contingent upon an executed agreement with the bank.

Matuszewicz moved and Owen seconded to approve the Visitor Center Service Agreement with the Chamber of Commerce contingent upon receipt of document that explains the Chamber's agreement with Mt. Crested Butte as well an executed promissory note with the Community Banks of Colorado. A roll call vote was taken with all voting "Yes." **Motion passed unanimously.**

### **NEW BUSINESS**

A) Approve Award of 2012 Street Paving Project.

Public Works Director Rodney Due explained that the bids received for the project were over the engineer's estimate and the total budgeted amount for the project and staff elected to go with the first two phases of the project to stay within budget.

Council asked if the Town has worked with Paving Maintenance Services (PMS) in the past. Due said the company did the 8<sup>th</sup> Street project and the Nordic Center parking lot project and Gillie said they also did the 6<sup>th</sup> Street project and a number of projects in Gunnison.

Local contractor Bill Lacy said although his company was not the low bidder on the project the difference in the bid was not that great and he would like the money to stay in Gunnison County rather than go to a company based in Salida. Lacy said his company spends a lot of money in the area and because he owns property on Elk Avenue, which he rents to local businesses, he has a vested interest in getting the project done in a timely manner and under budget. Lacy pointed out that his company was the contractor for the 4-Way stop project. He said he would subcontract with United Paving from Gunnison for this project and that he has worked with United before on many projects and the company is very professional.

Council asked Lacy a few questions about how many people he employs. Due said both companies (PMS or Lacy) can do the job, but in his opinion it comes down to following the bid process guidelines. Also, Due said he likes the idea of having competition for United Paving.

Council asked if Lacy could match PMS's bid. Town Manager Susan Parker said that is not allowed in a competitive bid process. Council asked about a local bid preference. Parker said Council has discussed the matter in the past and she can provide Council with an earlier memo on the topic. Parker added that choosing a local preference in such a small community would negatively impact the competitive bid process. Parker said it's important for the Town to help the local economy, but pointed out that PMS was the low bidder and it's important that the Town retain a competitive edge in the bid process. Bill Lacy said his company donates a lot to the community and as close as his bid is to PMS the Town should consider going with his bid.

A councilmember noted that PMS did a project in Salida that took a long time. Several councilmembers commented that they want to keep the project local and noted that the difference in the bids is very small.

Schmidt moved and Matusiewicz seconded to accept and award the bid for the 2012 summer street resurfacing project to Lacy Construction in an amount not to exceed \$404,693.22 plus 10 percent. A roll call vote was taken with all voting "Yes." **Motion passed unanimously.**

**B) Consideration of Revocable License for Sidewalk Seating at Montanya's 130 Elk Avenue.**

Gillie explained that Montanya's plans to use a section of sidewalk for outdoor seating and to transport alcohol from the building to the outdoor seating area. Additionally, Gillie noted that a portion of private property will also be used for outdoor seating. Town Clerk Eileen Hughes noted that because Montanya's holds a liquor manufacturing license that the liquor premise is approved only by the state rather than both the Town and the State, as is the case for retail liquor licenses.

Matusiewicz moved and Michel seconded to approve a revocable license for outdoor seating for Montanya's as proposed with the addition of a 3ft. section of sidewalk connecting the sidewalk

seating area to the front door of the business. A roll call vote was taken with all voting "Yes."  
**Motion passed unanimously.**

C) Consideration of Revocable License for Sidewalk Seating at The Brick Oven Pizzeria and Pub 233 Elk Avenue.

Mayor Huckstep stated he had a conflict of interest because the applicant is a client. Huckstep recused himself from the discussion and left the Council Chambers and Mayor Pro-tem Jim Schmidt took over as Chair of the meeting. Brian Schneider, one of the owners of the Brick Oven, said the bench and the bike racks in the area will need to be relocated to accommodate the sidewalk seating. Council asked if the posts to hold the fencing will be drilled into the sidewalk. Schneider responded that they will not drill into the sidewalk and the posts will be removable. Council noted that there were a few problems last summer with "creeping posts" and staff may have to mark where the posts should be located.

Matuszewicz moved and Owen seconded to approve the revocable license and expanded liquor license premise for the Brick Oven as proposed. A roll call vote was taken with all voting "Yes."  
**Motion passed unanimously.**

Mayor Huckstep returned to the Council Chambers and resumed as Chair of the meeting.

D) Request from the Lobar for a Revocable License for Outdoor Seating on Public Property.

Mayor Huckstep noted the staff report and other information in the packet regarding the Lobar's request for a revocable license. Carson West was present representing the Lobar. Several Lobar employees were also present.

Mayor Huckstep said the main question is does the Council want to consider a revocable license for outdoor seating for the Lobar. Council indicated support for the revocable license. One councilmember commented that if Council grants a license to the Lobar it may also need to decide if it should allow outdoor seating on public property in other areas. Gillie said it may not work in other areas and that requests should be considered on a case by case basis.

Lobar representatives said they initially wanted to have sidewalk seating along Elk Avenue, but the tenants in the building were not supportive.

Gillie noted that the proposed deck is a structural improvement on public property and asked if the Council is interested in having businesses improve public property. Gillie noted that the deck would need to be constructed in sections and removed after the summer season. Gillie said staff supports using the same seasonal timeline for the Lobar as revocable licenses issued for sidewalk seating on Elk Avenue.

Council and staff discussed the height of the proposed deck and Gillie noted there are ADA requirements that need to be met if the deck is a certain height. Council also discussed the parking spaces that front the proposed deck/seating area. Gillie said three of the parking spaces will need to be designated as compact spaces to accommodate the deck. One council member

suggested taking away a few parking spaces to accommodate the deck, but the majority of the Council did not support losing parking to the outdoor seating. Gillie noted that the proponents will need to have a lighting plan reviewed by the BOZAR. Council indicated support for allowing outdoor seating service on the deck until 10 p.m. Gillie noted that a small removable fence should be installed to delineate the path from the front door of the Lobar to the outdoor seating.

Council agreed to the following for the revocable license:

- The fee is \$3.00 per square foot.
- If a deck is installed it should be 18 inches or less in height, but a deck is not mandatory.
- The Lobar will be responsible for signing the compact parking spaces.
- Asked Lobar representatives to work with Gillie on the deck plans and lighting plan.
- Directed Gillie to draft the revocable license to bring back to Council.

Lobar representatives said they were okay with a deck height of 18 inches or less. Gillie said Lobar representatives will need to provide the Town with plans for the deck, the railing and the ramp and lighting will need to be approved by the BOZAR.

#### **LEGAL MATTERS**    None

#### **COUNCIL REPORTS AND COMMITTEE UPDATES**

Glenn Michel:

- The Director of the Office for Resource Efficiency, Andris Zobs, submitted his resignation.

Roland Mason:

- Attended a Rural Transportation Authority Board meeting. Airline guarantees for flights from Dallas have been negotiated.
- He will not attend the May 21, 2012 Council meeting.

Glenn Michel:

- Mt. Express will be reviewing their employee health insurance coverage.

David Owen:

- Attended a West Elk Loop Scenic Byway Committee Meeting. Proponents of the Bear Ranch Land Exchange project asked the group to support the project. The committee declined. West Elk Loop Byway informational signs will be installed in Almont, at the Chamber Visitor Center in Crested Butte and on Kebler Pass Road.
- Attended a Gunnison Valley Housing Foundation meeting.
- Attended a Region 10 meeting. There may be some collaborative regional economic planning.

Jim Schmidt:

- Attended the Gunnison Valley Housing Foundation meeting. If approved by the Board of County Commissioners, funds may be available for mortgage down payment assistance and for home improvements for low income people.

- Reported on the Kochevar Trails group. Phase 2 of the Lupine Trail will be constructed on a Saturday in early June. Discussed signage and working with ranchers. Also discussed a possible connector trail between the recreation path and Saddle Ridge.

Aaron Huckstep:

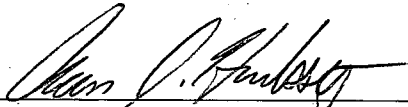
- Attended a mayors and managers luncheon.
- Will attend a USA Pro-challenge meeting on April 17.

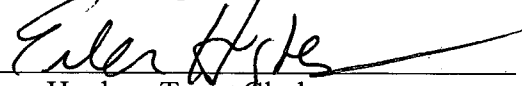
**OTHER BUSINESS TO COME BEFORE THE COUNCIL**

Council briefly discussed meeting attendance requirements. The Mayor will speak with Council member John Wirsing.

A discussion regarding 4<sup>th</sup> of July fireworks should be placed on the next agenda.

Mayor Huckstep adjourned the meeting at 10 53 p.m.

  
\_\_\_\_\_  
Aaron J. Huckstep, Mayor

  
\_\_\_\_\_  
Eileen Hughes, Town Clerk

(SEAL)

